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RULES AND ORDERS FOR THE COURT *Of Common* PLEAS

At *Weſtminſter*,

Made and publiſhed by the Judges of the ſaid Court, in the Term of St. *Michael*, in the year One thouſand ſix hundred fifty foure.

LONDON,
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24

RULES and ORDERS FOR THE COMMON BENCH,

Of the Terme of St. *Michael*, In the yeare 1654.

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1. FOr *the reducing of Attornies, and Officers, to their due attendance.*

2. *For the reformation of abuses of Sheriffs, and Bailiffs.*

3. *For discoverie, and punishment of abuses in general.*

4. *For the constant preservation of* ORDER *in the Court.*

5. *For settling a constant course of practice, pleadings, and proceedings, especially where there hath been variety of opinion, or practice.*

Concerning Attornies and Officers.

THat all Officers, and Attornies of the Court, be admitted of some Innes of Court, or Chancerie, by the beginning of *Hillarie* terme Next, or in

RULES and ORDERS FOR THE COMMON BENCH,

To begin from the day of In the year 1654.

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Concerning Attornies and Officers.

THat all Officers, and Attornies of the Court, be admitted of some Innes of Court, or Chancerie, by the beginning of *Hillarie* terme Next, or in

in the ſame Terme wherein they are admitted Officers or Attornies; and bee in Commons one week in every Terme, and take Chambers there, or in caſe that cannot be conveniently, yet to take chambers, or dwellings in ſome convenient place, and leave notice with the Butler where their chambers or habitations are; under pain of being put out of the Roll of Attornies.

2. That all Officers, and Attornies of this Court, appear in perſon in this Court, upon, or before the fourteenth day of Michaelmas Terme, and upon or before the ſeventh day of every other Terme, upon pain of ten ſhillings for the firſt default, twenty ſhillings for the ſecond default, and putting out of the Roll for the third default. The appearance to be entered with the Clerk of the warrants, and the defaulters to be delivered to the Court upon oath (if required) within three days after the time required for appearance.

3. That every Sheriff have his Deputy in Court to returne and receive *Writs*, and that each Deputy yearly before *Hillarie* Terme have his name and

the place of his residence in *Londo* or *Westminster*, set & continued up in tables in the office of Clerk of the warrants.

4. That the Clerks of Asize their Deputies or Assistants do personally appear with their *Posteas* on the first day of Easter, and Michaelmas Terme; and the Deputy Sheriffs, and all other Officers of the Court do personally appear by the Essoyn day of every second return of every Term; And continue there during the residue of the Term without some just cause to the contrary allowed by the Court.

5. That for the future Common Solicitors be not admitted to practice in this Court unlesse they are admitted Attornies of either Bench; provided that it extend not to the managing of evidence at a tryal, nor to Private Sollicitors, or servants of Corporations, or other persons in the cases of their Masters.

6. That none be admitted an Attorny of this Court for the time to come, unless he hath practised as a Common Sollicitor in this Court by the space of five years now last past; or hath served, or shall have served by the space of five years

years as a Clerk to ſome Judge, Serge-ant at Law, practiſing Councellour, At-torny, Clark or Officer of one of the Courts at *Weſtminſter*, unleſſe his Maſter dye or give over his practice, and be alſo upon examination found of good a-bility and honeſty for ſuch employ-ment; and that ſufficient proof (to be put into writing) be made of ſuch ſervice to the Prothonotary upon a deſire of Ad-mittance, and filed with the Clerk of the warrants without Fee.

7. That no perſon practiſe in ano-thers name, nor that any Attorny know-ingly permit another to practiſe in his name, upon pain of being put out of the Roll, excepting in warrants of Attorny for common recoverys.

8. That Attornies diſmiſſed by one Court from their practice for miſdemea-nour, be not (after certificate) admitted to practiſe in another Court, It being contrary to the intent of the Law.

9. That no under Sheriff or Bayliff of Sheriffs or Liberties be admitted du-ring ſuch their employment to practiſe as Attornies, under pain of expulſion from the employment of an Attorney, and not to be readmitted. 10. That

10. That ſuch Attornies as have not been attending their imployment in this Court by the ſpace of one year laſt paſt, unleſſe hindered by ſickneſſe, bee not allowed their priviledge of Attornies.

11. That for the prevention of maintenance and broccage, no Attorney bee Leſſee in an ejectment, nor bayle for a defendant in this Court in any Action.

Concerning Sheriffs and Bayliffs.

THat for the prevention and remedy of delays & abuſes in Sheriffs, under Sheriffs, Bayliffs of liberties and their Deputies, and other Bayliffs of Sheriffs &c. in execution of proceſſe and writs, that if it ſhall appear that any ſuch Officer ſhall wilfully delay the execution or return of any Proceſs or Execution, or ſhall take or require any undue Fees for the ſame, or ſhall give notice to the defendant, thereby to fruſtrate

ſtrate the Execution of any Proceſſe or Writ, or having leavied money, ſhall detaine it in their hands after the time of the returne of their Writs, beſides the ordinary courſe of Amerciaments (the contempt or miſdemeanour appearing) an Attachment, Informarion, Commitment, or Fine to be, as the caſe requireth. And this as well in the caſe of a late Sheriffe, or perſon before mentioned, as of them at preſent in Office.

And whereas Sheriffs have taken immoderate and exceſſive Fees for Execution of Writs of Poſſeſsion, or reſtitution of poſſeſsion, contrary to Law; It is declared that ſuch immoderate Fees ought not to be taken; and in caſe ſuch ſhall be taken, the Court to proceed to puniſh the ſame according to law, upon complaint thereof made.

That to reforme abuſes by blank Warrants granted by Sheriffs, whereby perſons are arreſted, and driven to extorted Compoſitions for their liberties without proceſſe of Law; that no

no Warrants bee granted out to any Officer to arreſt or attach any perſon before a Writ firſt come to the Sheriffe.

Concerning the Reformation and puniſhment of abuſes in generall.

ORdered, That a Jury of able and credible Officers, Clerks, and Atturneys, once in three yeeres be impannelled, and ſworne to enquire,

1. Of the points uſually inquirable by the Writ (*viz.*) falſities, contempts, miſpriſions and offences.

2. Of ſuch who have been admitted Attourneys or Clerks, and are notoriouſly unfit, their names to be preſented to the Court, and they to be puniſhed

puniſhed or removed, as the caſe ſhall require.

Of new or exacted Fees, and of thoſe that have taken them, under whatſoever pretence, and to prepare and preſent a table of the due and juſt Fees, that the ſame may bee fixed and continue in every office; and likewiſe for the Fleet.

And that ſome perſons be Injoyned and ſworn to give evidence (*videlicet*) ſome Clerks of the Court and ſome Attornies in every County, not excluding others.

Concerning the better preſervation of Order among the Officers and Clerks, and obſervation of breach of Orders and Miſdemeanours.

THat the Court do once every year in Michaelmas Terme nominate twelve or more able and credible practiſers in the Court to continue for the year enſuing, for theſe purpoſes hereafter limited.

That they or any ſix of them Examine ſuch perſons as ſhall deſire to be admitted Attornies, and appoint convenient times and places for the ſame: and in order thereunto, that ſuch perſons as ſhall deſire to be admitted Attornies, firſt

first attend the prothonotary with his proof of service, then to repair to the persons appointed to examine Attornies, and being approved, to be presented to the Court with the assignation of his approbation, and then to bee sworn in open Court, unlesse some just exception be against him.

That they give information to the Court from time to time, of Breaches of Orders, and miscarriages of Officers, Attornies, and Clerks.

That a settled course of practice and proceedings bee settled, especially in those cases where there hath

been uncertainty and that the inconveniences in proceſſe, proceedings, and pleadings may bee regulated unto a due courſe. In Order whereunto theſe ſeveral things are Ordered and directed according to the method of Proceedings.

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1. *Concerning the Entring of Records and the perſons by whom.*

THat no Rolls be delivered to be entered, but only to Clerks, or ſuch Atturnies as have entred for the ſpace of four years laſt paſt, for themſelves.

That

That a table be ſet up of the Names of the Officers and Clerks that are to be admitted unto the Rolls of the Treaſury: and that ſuch and no others be admitted thereunto, and that they may reſort there as well for their Occaſions, as for their Learning & Inſtruction, during the Term, and alſo twice in every week from a month after the Terme, and that every ſuch Clerk duly attend as well the prothonotaries Office in the Terme time as for the Entring of Judgements upon Summons given by the prthonoters reſpectively.

For the prevention of the unundue iſſuig of Judicial writs, and falſifying of Records. It is Ordered,

That all Executions, and all other Writs Iſſuing out of the prothonotaries

ries offices be duly ſigned by the reſpective prothonotaries before the ſame be ſealed, and that no Exemplification of any common Recovery or other Record which ought to be examined and ſigned by the prothonotary, be ſealed before the ſame have been ſigned by the Prothonotary. Nor that any exemplification (excepting exemplifications of Fines and common Recoveries of the preſent or next precedent Term) be ſealed before they be firſt ſigned and examined by the Clerk of the Treaſury.

And becauſe the intermedling and dealing of Clerks in more then one prothonotaries Office at one time, hath been an occaſion of diſorder and uncertainty in proceedings; It is likewiſe Ordered, that every prothonotaries Clerk do apply himſelf from henceforth to one prothonotaries office only, and do give his attendance and make his Entries in that prothonotaries Office.

Concern-

2. *Concerning Rolls and Records, and their Entries & Bringing in.*

That the whole proceeding of any Cauſe after Appearance be carried on in the Office of that prothonotary where it was firſt entered or declaration delivered.

That no Rolls be carried into the Country, under pain that the offender be excluded from Entring any more Rolls afterwards as a Clerk.

That the Common Rolls of every Term, except Eaſter, be brought in to the prothonotary fairly entred, & docketted at leaſt ten days before the Eſſoigne day of the ſucceeding Terme, under pain of ten ſhillings for every Roll wanting. And that no Rolls be delivered to ſuch perſon after any ſuch offence the ſecond

cond time, without ſpecial Order.

That the reſpective Prothonotaries before the third day of the then next Terme, do give in the Names of the Defaulters and Defaults unto the Court in writing.

That the Rolls brought into the Prothonotary be delivered over to the Clerk of the Warrants the day before the Eſſoigne day of the enſuing Terme, together with a Note of the Rolls that are wanting, the ſame Note to bee ſubſcribed by the Clerk of the Warrants, and redelivered to the Prothonotary.

That the Clerk of the Warrants within five dayes after Receipt of the Rolls from the Prothonotary, to deliver over the Common Rolls to the Clerk of the Eſſoignes, taking the like Note from the Clerk of the Eſſoygnes of the Rolls wanting.

hat the Clerk of the Eſſoignes bind up the Rolls; *viz.* the firſt part before the appearance day of the ſecond returne, the ſecond part before the Eſſoigne

ſoigne day of the third Return, the third part before the Eſſoign day of the next Terme.

That the Rolls of Eaſter Terme be brought to the Prothonotary on or before the firſt day of Trinity Terme, Delivered to the Clerk of the Warrants within ſix days, to the Cletk of the Eſſoign within five days after, to be bound up before the Eſſoigne day of Michaelmas Terme, each party ſubſcribing the like Notes, and the penalties the ſame as before.

Concerning Original Suits and proceſſe, where laid.

That Actions upon the caſe, treſpaſſe, for goods, aſſault or Impriſonment ariſing in any Engliſh County bee, laid in

their proper Counties, unleſſe they ariſe where Juſtices of *Niſi prius* ſeldome come. And becauſe treſpaſſe, or trover, for goods, Battery, Impriſonment, and ſlander muſt needs bee notorious in what County they ariſe; the Attorny knowingly laying them out of the proper County (unleſſe in the Caſes before expreſſed, or for ſuch other cauſes as ſhall bee allowed by a Judge of the Court, and duly made appear to be true) be ſeverely puniſhed.

That although the declaration be delivered ſeven days before the laſt day of the next precedent Terme, or after, yet before plea upon Oath made, the Viſne may be changed upon motion, in the ſaid tranſitory actions, the next Terme after: And the Defendant to plead to the new Action as he ſhould have done in the other, without delay.

That the Viſne may be changed, (upon Oath) as before, though the Defendant come in by Exigent.

Concern-

Concerning Proceſſe, and ſerving thereof.

That according to the proviſion of the ſtatute of the one and thirtith year of Queen *Elizabeth*, All Attornies that ſue out proceſſe of Exigent be careſull that writs of Proclamation be delivered, and the Sheriff do take care duly to execute the ſame.

That according to the ſtatute of the twenty third year of *Henry* the ſixth, a priſoner taken upon a *Capias* in proceſs, be not diſcharged till hee hath given bond to appear, unleſs the plaintiff or his Attorny ſhall conſent to take an appearance without Baile. And in ſuch caſe the warrant of Attorny to appear, to be ſubſcribed or accepted by the Defendants Attorny, & ſuch warrant not to be revoked, and an Attachment to be grant-

ed againſt the Bayliff offending herein, or againſt the Attorney refuſing to appear or procure an appearance, having ſo Subſcribed or Accepted.

And foraſmuch as divers Sheriffs, Bayliffs of Liberties, and their Bayliffs reſpectively have of late time contrary to law, and againſt former Orders of this Court, diſcharged perſons taken upon Outlaries without *Superſedias*; It is hereby Declared, that ſuch dealing is an abuſe; and that all ſuch who have or ſhall diſcharge ſuch perſons without *Superſedias*, ſhall be ſeverely puniſhed. And that no Sheriff, under-Sheriff, their Deputies or Bayliffs, may from henceforth diſcharge or ſet at Liberty any perſon or perſons arreſted upon any *Capias utlagat* untill he receive a *Superſedias* according to Law from the Officer or Officers thereunto appointed.

Concern-

Concerning a Habeas Corpus *to Sheriffs and Goalers.*

That a *Habeas Corpus cum Cauſa ad faciendum & recipiendum*, directed to any Sheriff (other then *London* and *Middleſex*) not to be returneable *immediatè*, or in the vacation time, but at a day certain in Court in the Terme.

That ſuch *Habeas Corpus* to the Sherriff of *London* or *Middleſex* may bee granted in Terme or vacation time returnable *Immediatè*.

That in caſe of *Habeas Corpus* returnable *immediatè*, the Sheriff ought to make his return the ſame day that the writ is delivered, and to bring the Body imediately, as is required by the writ, without permitting him to wander abroad by colour

colour or pretence thereof.

That where a writ of *Habeas Corpus* is directed to a Sheriff, Warden of the Fleet, Marshal or Goaler, the prisoner is to be brought in custody according to the writ at the day limited, without being permitted to wander abroad in the mean time, upon pretence of such writ.

That a *Habeas Corpus ad respondendum* may be granted to the Warden of the Fleet, or to the keeper of an inferour prison of a liberty or franchize, where a *Capias* is returned in Court, *Non est inventus*; such writ to recite shortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cause of *Deteiner*, as well as where a *Capias ad respondendum* comes to a Sheriff.

That a *Habeas Corpus ad satisfaciendum* may be Granted to the Warden of the Fleet, or to such inferiour Goaler returnable in Court at a day certain, and the Number Roll of the Judgment to be endorsed upon the writ by the Attorny who sues it out; and such writs to be a Cause of deteiner.

That if upon a *Habeas Corpus* the prisoner be returned charged with proceſſe

ceſſe out of the upper Bench or Exchequer, and out of the Common Pleas, the Priſoner may be committed with thoſe Cauſes.

That if upon a *Habeas Corpus cum Cauſa* the priſoner be returned charged with a proceſſe out of the Common Bench, though returnable at a day to come, the priſoner may bee committed with his Cauſe.

That if upon a *Habeas Corpus*, or *Cepi Corpus*, the party be returned in cuſtody and Baylable, and ſpecial Baile requirable, the Baile not to be taken abſolutely without conſent of the plaintiff or his Attorney, and if taken *de bene eſſe*, the priſoner not to be diſcharged till the Baile be aſſented unto, or the plaintiff over-ruled in Court to accept the ſame upon Examination.

That upon every Commitment by a Judge out of Court, the proſecutor of the *Habeas Corpus* is to have one of the prothonotaries Clerks preſent at the turning over of the priſoner, that the Commitment may be duly entred and filed.

Concern-

Concerning Habeas Corpus *to Inferiour Courts and* Procedendo.

That Writs of *Habeas Corpus*, directed to the inferiour Courts of *London*, *Weſtminſter*, *Southwark*, and other Courts within five miles of *London*, may be returnable *immediatè*. And if the Defendant intendeth to be bailed, then upon, or within four daies after allowance of the Writ *Notice*, is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the ſame is intended to be put in, to the Plaintiff or his Attorny, or him that cauſed the plaint to be entered; or if none can be found, then notice of the Premiſſes to be left in writing with the chief Clark of the inferiour Court, or his

his Deputy by the party that tenders the Baile, or his Attorney, and Oath made thereof; otherwiſe the Baile not to be taken. And a *procedendo* granted if deſired, before Baile accepted.

That if no Baile in ſuch caſes be put in within eight days after the *Habeas Corpus* allowed, in thoſe Courts when it is returnable *immediat* a *procedendo* may be granted by any Judge of this Court, if deſired before Baile taken.

And if Baile be taken in the abſence of the plaintiff or his Attorney, the ſame is to be taken *de bene eſſe*, and if no exception be taken within twenty days after notice given to the plaintiff or his Attorney of the names of the Baile, and before whom taken, then upon Oath made of ſuch notice, the Bail to be delivered out to be filed.

That if Baile upon a *Habeas Corpus* bee taken before a Judge at his chamber, and not aſſented unto, if not filed within foure days after the twenty days, a *procedendo* may be granted upon certificate that it is not filed.

That in Terme time the plaintiff in the inferiour Court may ſpeed the defendant to put in, or to file his Baile by rules given in the Bill of Pleas; and if not filed according to rules, upon certificate thereof, a *procedendo* to be granted.

That all writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Baile taken of a perſon in cuſtody, the Judges Clerk to deliver the Baile to the *prothonotary*, to be filed, if aſſented unto; and to that end the prothonotaries Fees to be depoſited, but the priſoner not to be diſcharged, untill the Baile be aſſented unto, or over-ruled in open Court.

Concern-

Concerning ſpecial Baile.

That if the defendant appear upon the ſummons, Attachment, or diſtreſſe, or by *Superſedias quia improvidè*, or doth truly render himſelf upon the exigent, no baile is requireable.

That in all cauſes of removall, be it by *Habeas Corpus*, Priviledge, or *Certiorari*, ſpecial bayle ought to be given.

That in cauſes where the Defendant comes in by *Cepi corpus*, be it debt, detinue, treſpaſs, for goods, Action upon the caſe (except ſlander) if the debt or dammages amount to twenty pound, ſpecial baile is to be given, except it be againſt an Heyr, Executor, or Adminiſtrator.

That in Covenant becauſe the damages are uncertain, til declaration, Baile at diſcretion.

That in battery, conſpiracy, falſe impriſonment, no ſpeci al baile of courſe without ſpecial motion and order.

That in ſlander no ſpecial baile, except in ſlander of Tytle, wherein to be left to the diſcretion of the Judges.

That in priviledge, other then for Fees and disburſements as an Attorney in this Court, baile at diſcretion of the Court. In ſuch caſe wherein a ſuit by a common perſon, eſpecial baile is not requiſite.

That if baile be given upon reverſal of an Outlary, or removable by *Habeas Corpus*, the original to be ſhown upon tendring of the declaration, otherwiſe the baile not lyable; unleſſe the party or his Attorney will voluntarily appear, or take a declaration, without ſhewing of it.

That in caſe of a removall out of an inferiour Court or reverſal, the new original to agree in the nature of the Action, the ſumme in demand, and the County, otherwiſe the baile not lyable: but if the party will voluntarily appear to ſuch varying original, to be good as to the party: but if upon a cauſe removed

ved by *Habeas Corpus*, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Lichfield*, or *Poole*, which are Counties where the Judges of *Niſip'rius* ſeldome come, if the Action bee tranſitory, it muſt be laid in the County of *Kent*, *Southampton*, *York*, *Stafford*, or *Dorſet*, where the Town and County lieth, and the recognizance to be taken accordingly.

That the principall rendring himſelfe at any time after baile put in, and before or upon the day of appearance of the *ſcire facias* returned, *ſcire feci*, or of the ſecond *ſcire facias* returned *nihil*, or in caſe there ſhall bee an Action of debt brought upon the recognizance againſt the baile, then if the principal ſhall render himſelfe, upon or before the proceſſe returned ſerved, no further proceedings to be againſt the baile.

Concern-

Concerning Appearances, and Entries thereof.

That Appearances be duly entred with the Prothonotaries or Phillizers of this Court reſpectively, with whom the ſame ought to be entred: but if ſpecial baile be requirable in the caſe, the plaintiffe not to be concluded by ſuch appearances, if he inſiſt upon it.

That where an appearance is upon the original writ, if the defendants appearance be not entered of Record, the defendants Attorney to give his hand to the plaintiffs Attornie upon the delivery of the declaration, that he appeareth thereunto.

That any Attorney of either bench accepting a warrant to appeare, or ſubſcribing a proceſs, declaration, or warrant to appear, be compelled to cauſe

cauſe appearance, or be liable to an attachment, or put out of the Rol, as the caſe requires; and the party not to bee received to countermand ſuch appearance after his Reteyner.

That no perſon without Rule of Court, order of the Judge or Prothonotary; and notice to the adverſe partie or his Attorney, change or ſhift his Attorney; and ſuch Attorney newly coming in, to take notice at his peril of the Rules whereunto the former Attorney was lyable, had hee continued.

That a Reteyner of an Attorney of the Common pleas, by an Attorney of the Upper Bench, *& è Converſo*, be a ſufficient excuſe to the Attorney ſo reteined, acting according to ſuch reteyner, and the Attorney ſo retaining it without warrant from the party, to be ſubject to the puniſhment.

That if a *Capias* be returned in Court *non eſt inventus*, againſt a priſoner in the *Fleete*, he is compellable to appear upon a *Habeas Corpus ad reſpondendum*, as well at the ſuit of a ſtranger, as at his

his ſuite whereupon hee is impriſoned, and to anſwer to a declaration according to the rule of the Court, or that udgement bee entered againſt him.

That hee that reverſeth an outlary have an Attorney of Record preſent, who muſt undertake an appearance to a new original. And ſuch Attorny ſhall be compelled to appear; and that the defendant or his Attorney give notice to the plaintiffe or his Attorney, of ſuch reverſal the ſame terme, or in the vacation next after it.

Concerning Imparlances.

That for as much as ſome Inconveniencies doe ſometimes happen to plaintiffe, by entring their declaration in ſpeciall Actions. It is therefore

or

ordered that the plaintiff in ſuch ſpecial Actions ſhall have libe:ty to enter the Imparlances the Terme following, entring the ſame of the firſt Terme with an *Incipitur*, as it hath been uſual in *Quare Impedits*: but that all other imparlances be duly entred before any Iſſues, or demurrers, or judgements thereupon be entred.

That if the defendant appear the firſt Terme, and give no Rules to declare, the defendants Attorney may the ſecond Terme be compelled to accept of a declaration with Imparlance, and the declaration may be entred as of that Term, with an Imparlance over to the next Terme, or in the firſt Terme with an *Incipitur*, as before, as the caſe ſhall require.

That if the plaintiff declare not the ſecond Terme, though the defendant give no rules, yet a non Suite may be entred at the end of the Second Terme upon a continuance over by him entred by *dies datus*, but not the third Terme, or after.

That upon a meere real Action, or a bare *clauſum fregit*, an Imparlance of Courſe. But in Dower after view had, if

the day to appear be upon the first return of any Hillary or Trinity Term, no Imparlance without consent or rule of Court.

That in Ejectment or any personal action, If the apperance be the first returne of Hillary or Trinity Terme, no Imparlance without consent or special rule in such causes, other then in *London* or *Middlesex*. If the appearance be before *Crastin' Martin'* or *mense Pasc.* no Imparlance without consent, or speciall rule. But if upon or after those returnes, an Imparlance of Course.

In *London* or *Middlesex* if the appearance bee before *Crastin' Ascen'*, or before the last returne of any other Terme no Imparlance without a speeial rule or consent; but the defendant to plead as of that Terme within fourteen days after the end of the Terme upon rule given to answer: but if of *Crastin' Ascen'* or the last returne, then an Imparlance of course.

That no Judgement by *nihil dicit* be entred untill there be a rule to plead, first given in that Prothonotaries office, where the cause is entred, and the day by such rule be past, and that such rules be

be only given in the Bills of pleas or other remembrances for that purpoſe, only to be in the cuſtody of the ſecondary of the reſpective prothonotaries, during the time limited for giving of rules, to the intent that all perſons concerned may have recourſe to the ſaid ſecondary, and to ſee the ſame *Gratis*; and that Clerks who uſually enter for Attornies, may give rules for anſwer in the ſaid remembrances in all their own cauſes wherein there hath been Imparlances, except in Ejectments, ſo as they enter the ſame rules in the office without carrying any of the ſaid remembrances out of any of the ſaid offices; and that the ſecondary ſet down upon the remembrances the day wherein ſuch rules are given, and that no rules to declare or anſwer be given after three days excluſive after the end of any Terme, and ſuch rule to be out at four days incluſive of the day wherein the ſame is given.

That in all actions except Replevin (after rules to declare are out, yet) if the plaintiff or his known Attorny or Clerk be to be found, a Nonſuite for want of a declaration not to be entred, unleſſe the

Plaintiffs Attorney or known Clerk be first called to for a declaration.

That if the Plaintiffs Attorney or Clerk be called to for a declaration, and delivers it not to the Defendant or his Attorney sometime during that Terme, then the rule being out, the Defendants Attorney may enter a Nonsuit.

That if the Plaintiffs Attorney being called to for a declaration, cannot afterwards finde the Defendants Attorney or Clerk to save a Nonsuit, he may deliver a declaration into the prothonotaries office where the rules are given.

That when a Deed, Will, or Letters of Administration are to be shewn in a declaration, the Attorney of the Plaintiffe delivering a declaration with a subscription, that the Defendant shall not be compelled to plead till the same be shewn; no Judgment by *Nihil dicit* be entred against the Defendant till the same shewn; nor any Nonsuit upon the Plaintiff if he shew the same before the end of the next Terme.

If the Defendant bee committed to prison by Processe out of this Court, or *Habeas Corpus*, the prisoner entring his appearance

pearance with the Prothonotary in caſe of a plaint, or in caſe of attachment of priviledge; or with the Filizer in caſe of other proceſſe, and giving rules to declare, the Plaintiff not declaring before the end of the next Term after the commitment, the defendant in reference thereunto to be diſcharged of his Impriſonment by *Superſedias* in the end of the next Terme, and Liberty for the Plaintiff to declare upon that appearance the next Terme after that at the furtheſt.

That if a writ be returnable 5. *Paſc.* or the laſt returne of any Terme, the Defendant, giving rule, and calling for a declaration, if it be not delivered according to the former directions, four days or more before the Eſſoigne day of the enſuing Terme, may enter a Nonſuit, though above ſixteen days after the preceding Terme.

That the Plaintiff having declared and given rules for anſwer, the Defendant is to deliver his plea in writing to the Plaintiffs Attorney, or known Clerk.

That if there be no ſuch Attorney or Clerk to be found, or being found, refuſeth to accept it, then the plea may be left.

left in the office to save a Judgment.

That in any case where a Plea or Declaration is left in the office, no Nonsuit for want of a Declaration, or judgment for want of a Plea bee Entred.

That in cases of popular actions, Informations, or real, or mixt actions, except ejectment, no judgment to be entred by default, or *nihil dicit*, without motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgment be entred after rule, without motion by the Plaintiff.

That after any Imparlance of three Termes, without any calling for answer, no Judgment to be entered without a Terms notice.

Concern-

Concerning Declarations.

For avoiding of long and unneceſſary repetitions of the Original Writ in Actions upon the Caſe, and perſonal Actions upon penal Statutes.

That Declarations in Actions of Treſpaſſe upon the Caſe, or perſonal Actions upon any general Statute; namely, Hue and Cry, *Monopolies*, and for ſuits in the Admiralty; and ſuch like, other then debt, repeat not the Original writ but only the nature of the action. *viz.* *A. B.* was attached to anſwer *C. D.* in a plea of treſpaſſe upon the Caſe, or in a plea of treſpaſſe and contempt, againſt the forme of the ſtatute.

For

For the avoiding of the Common Barre and new aſſignment.

The declaration upon an Original, or Bill *Quare clauſum fregit*, may mention the place certainly, & ſo prevent the uſe and neceſſity of the Common barre and new aſſignment.

That unneceſſary length of declarations be reformed. And in order thereunto,

That in actions of covenant not to repeat more of the deed then is neceſſary for the aſſignment of the breach, and not to repeat the Covenant in the concluſion.

That in actions of ſlander, long preambles be forborn, and no more inducement then what is neceſſary for the maintenance of the accord, when it requires a ſpecial Inducement or *Colloquium*.

That in actions upon general ſtatutes the declaration not to repeate the ſtatute, but to conclude againſt the forme of the ſtatute in ſuch caſe made and provided: as in caſe of debt, upon the ſtatute of the ſecond year of *Edward* the ſixth, For Tythes; the thirty ſecond of *Henry* the

the eighth, for Maintenance. 21 *Jacobi* for *Monopolie.*

That actions of debt upon a Judgment had in the Courts at *Weſtminiſter*, to recite only the Judgment. But if a Judgment had by, or againſt an Executor or Adminiſtrators debt, thereupon to repeat the Declaration and Judgment.

That before the declaration actually entred, the Plaintiff may mend his Declaration, paying coſts, or giving an Imparlance, at the Plaintiffs election, by the Order of a Judge of the Court, or Prothonotary: But after it is entred, if the amendment be but a ſmall matter that doth not deface the Roll, yet that before iſſue or demurrer entred it be amendable by rule of Court upon coſts and libertie to plead, with a new or further Imparlance.

To cauſe care in examination of the Declaration.

That if the Plaintiffs Attorney or Clerk deliver a Copy to the Defendants Attorney or Clerk, materially varying from the Original declaration, the diſadvantage thereof not to be caſt upon the Defendant, but on the Plaintiff, whoſe Attorney is paid for it.

Concerning Pleading.

The Common Barre and new aſſignment to be forborn, where the declaration contains the certainty equivalent to a new aſſignment.

That pleadings be ſuccint, without unneceſſary repetitions.

That in the pleading of an Outlawry the *meſne* proceſſe be not repeated, but the exigent, and Utlary joyned to the commencing of the ſuit.

That in pleading a general ſtatute, the ſtatute be not recited, As the ſtatute of twenty one *Jacobi* of Limitations.

Concerning Demurrers.

That according to the ſtatute of the twenty ſeventh of *Elizabeth* upon Demurrers, the cauſes be ſpecially aſſigned, and not involved with general unapplyed expreſſions of double, negative, pregnant, uncertain, wanting forme, and the like; but to ſhew ſpecially wherein that the other party may (as the caſe ſhall require) either joyne in demurrer, or amend, paying coſts; or diſcontinue his Action.

That it be declared, that matters of form, aſwell on the part of him that demurres, as of him that joyns in all parts of the pleading, are diſcharged; unleſſe ſuch as are ſpecially aſſigned upon the Demurrer.

Concerning Tryals, and notice of Tryals and Inquiries.

That notice of Tryals or Inquiries in *London* or *Middlesex*, the Defendant dwelling within forty miles of *London*, be eight days exclusive of the day wherein notice is given.

That if the Defendant live above forty miles distant from *London*, notice of such Tryals and Inquiries in *London* or *Middlesex* be fourteen dayes exclusive of the day of notice.

That in all Issues to be tryed by *Nisi prins* in *London* or *Middlesex* upon a record of a precedent Terme, the copy of the Issue be brought to the Clerk of the Treasury, for the ingrossing of the Record, four dayes at the least before the day of Tryal of such Issue; and that all Causes to be tryed in *London* or *Middlesex*

ſex be entered into the Marſhals Book four dayes before the day of tryal.

That eight dayes notice excluſive be given upon tryals in the Country,& upon writs of enquiry of dammages in writs of dower and waſt, and all other inquiries of dammages.

That if the Plaintiff give notice of a tryal, and he proceed not, the Plaintiff not to take it down to tryal again without new notice to be given, as is before expreſſed, unleſſe by conſent or Rule of Court.

But in *London* or *Middleſex*, if notice be given of a tryal for one ſitting, and the Plaintiff be not provided to proceed: Then if hee give notice before the ſitting that he will try it the next ſitting, that to be held convenient notice.

That in caſe of ſuch warning, and no proceeding,the Defendant upon motion to have his coſt of his former attendance, to be taxed by the Prothonotary;unleſſe the Plaiatiff give the Defendant warning in convenient time that he would not proceed;or ſhew cauſe to be allowed by the Court in excuſe of ſuch Coſts. That

That no Record of *niſi prius* be ſigned before the iſſue be entred upon the Roll.

That if the Plaintiff give notice for a tryal, and proceed not, the Defendant may take it by proviſo according to law, giving notice eight or fourteen days, as the caſe requireth, as aforeſaid.

That in *London* or *Middleſex*, if no warning for a Tryal, then the Defendant not to take it by proviſo, to try it the ſame Terme; but afterwards hee may take it by proviſo according to Law, giving eight or fourteen days notice as the caſe requires.

That if notice bee given to the Attorney of the adverſe party of a tryal upon an iſſue joyned, it be taken to be good notice: And oath made of want of notice to the Attorney, to turne the proof of notice given to the party upon him that brought it down to Tryal in that caſe.

That if an iſſue bee joyned above a year ſince in any caſe, then one Terms notice to be given of the tryal.

Concern-

Concerning Tryalls at Barre.

That for the remedy of exceſsive charges of Tryals at the Barre, eſpecially whilſt the Jury lyeth out, it is ordered that a Jury lying out one night after a privy verdict delivered, there be allowed for the whole dyet of each Jury man that night no more then three ſhillings four pence a piece, and for two Cryers to each of them, no more then two ſhillings ordinary, beſides the charge of the Jurours Lodging.

That after a verdict delivered in Court, the Jury and Officers to be paid their charges and fees in the Inner Treaſury, without going to the Taverns or Victualling houſes for that cauſe.

Concer-

Concerning ſpecial verdicts at the Bar, or by Niſi prius.

That in finding ſpecial verdicts where the points are ſingle and not complicated, and no ſpecial concluſion, the Councel (if required) do ſubſcribe the points in queſtion, and agree to amend omiſsions or miſtakes in the *meſne* Conveyance, according to the truth, to bring the point in queſtion to Judgment.

That unneceſſary finding of deeds in *hæc verba*, where the queſtion reſts not upon them, but are only derivation of title, to be ſpared; and found ſhortly, according to the ſubſtance they bear in reference to the Deed, as Feoffment, Leaſe, Grant, &c.

Concern-

Concerning new Tryalls.

That where a verdict findes entire damages where damages are the principal, and part not actionable, though judgment be arrested, yet by rule of Court a *venire fac' de novo* may issue as upon an Ill verdict, and upon the new tryal the party may sever his damages.

Concerning Judgment.

That in a judgment by *non sum informatus*, or *nihil dicit*, in *Eject' firme*, the *Capiatur* be entred upon the first judgment.

That upon a cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the cause, if Judgment be given for the Plaintiff, the costs below to be considered and cast into the

judgment; if for the Defendant, the charge of putting in baile.

That the principal in any bond or bill obligatory do not for the time to come give warrant to appear for, or confesse judgment against his surety: and that after the two and twentieth of *January* next, no judgment be confessed for, or given against the surety upon any such warrant given by the principal.

That sixteen days be allowe dfor the signing of Judgments after every Terme, except Easter Terme, upon causes depending in the erme precedent.

And lastly, it is declared by the Justices of this Court, that as the Court doth expect that all the Rules and Orders before mentioned be duly observed; so it is further Ordered, that all other former Orders and Rules yet in force not hereby altered, suspended or adnulled, be likewise Observed and put in execution according to the true intent and meaning of the same.

Ol. St John. Matthew Hale.
Edw, Atkins. Hugh Windham.

FINIS.

The Oath to be taken by every Attorney of the Common Pleas, before their admittance, to bee administred openly in Court.

YOu shall do no falshood or deceit, nor consent to any to be done within the Court: And if you shall know of any to be done, you shall give knowledge thereof to the Lord Chief Justice, or other of his

brethren, Justices of this place, that it may bee reformed. You shall delay no man for lucre or Malice. You shall increase no fees, but you shall be contented with the old fees accustomed. You shall plead no forreign Plea, nor sue no forreign Suits unlawfully, to the hurt of any man; but such as shall stand with the Order of law, and your own conscience. You shall seal all such processe as you sue out of this Court, with the seal thereof: and see the fees paid for the same. You shall not wittingly nor willingly sue, or procure to

be

be ſued any falſe ſuit, nor give aide or conſent to the ſame, upon pain to be expulſed from this Court for ever. And further, You ſhall truly uſe and demean you ſelf in the office of an Attorney within the Court, according to your learning and diſcretion.

So help you God.

So help you God.

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